

"No Protest Received"

Case closed. [redacted] 7/13

Internal Revenue Service
District Director

Department of the Treasury
P.O. Box 2508
Cincinnati, OH 45201

Person to Contact: [redacted]

Telephone Number [redacted]

Refer Reply to:

EP/EO

Employer Identification Number: [redacted]

Date: JUN 18 1993

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(12) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given as to whether you qualify for exemption under other subsections of section 501(c) of the Code, and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

5/27/93

6-1-93

6/8/93

Active
Chief
6-11-93

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]
District Director

Enclosures: 3

Enclosure I

Information submitted establishes that you were incorporated on [REDACTED], under the laws of the State of [REDACTED].

The Articles of Incorporation state your purposes are:

- (a) to serve as the Association and to have and fulfill all purposes of the Association referred to in that certain Declaration of Covenants and Restrictions for [REDACTED] which was recorded on [REDACTED], in the Office of the Recorder of [REDACTED] County, [REDACTED], as Instrument No. [REDACTED] (the "Declaration") and to manage and operate the property known as [REDACTED], which property is described on Exhibit A to the Declaration and which is herein called the "Park"; and
- (b) to perform any and all lawful activities and to have all powers necessary or convenient to carry out the Corporation's affairs, including, without limitation, all of the express and implied powers set forth in the Declaration.

The Articles state that there shall be one (1) class of membership in the Corporation and that all members shall be entitled to vote on all matters, except as may be limited by the Bylaws of the Corporation. The Bylaws define members as those persons and other legal entities who own property in Castleton Park, which is described in that certain Declaration of Covenants and Restrictions for [REDACTED] recorded on [REDACTED], in the Office of the [REDACTED] County, [REDACTED], Recorder, as Instrument Number [REDACTED].

The application discloses that your sole activity is to maintain the common areas of the [REDACTED]. [REDACTED] manages the leasing and maintenance of this [REDACTED] acre, [REDACTED] building commercial office complex on behalf of its [REDACTED] owner/occupants. You were formed to act as a property owners association. You will pay the costs and expenses of maintaining the common streets, park areas, lakes, and other common areas from funds collected on a prorata basis from the owner/members.

Your application also states that you are "of a purely local character" in that you only benefit and serve members owning property in the [REDACTED].

Although you were incorporated on [REDACTED], you had no financial activity for [REDACTED] and [REDACTED]. Proposed budgets for [REDACTED] and [REDACTED] reflect all income from the [REDACTED] owner/occupants. Proposed expenses are for insurance, maintenance of buildings, grounds and labor, equipment costs, security, utilities, real estate taxes and other miscellaneous.

Enclosure I continued

Section 501(c)(12) of the Code provides exemption from Federal income tax for: "Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses."

Section 501(c)(12)-1(b) of the Income Tax Regulations provides, in part, that the phrase "of a purely local character" applies to benevolent life insurance associations, and not to the other organizations specified in section 501(c)(12). It also applies to an organization seeking exemption on the ground that it is an organization similar to a benevolent life insurance association.

Organizations which have been held to be like benevolent life insurance associations include burial and funeral benefit associations which provide benefits in cash. Thompson v. White River Burial Association, 178 F.2d 954 (1950)

Although your activities may be "of a purely local character," you are not a benevolent life insurance association or similar to that type of organization. Accordingly, we conclude that you do not qualify for recognition of exemption under section 501(c)(12) of the Code.

A determination has also been made as to whether or not you qualify as a social welfare organization under section 501(c)(4) of the Code.

Section 501(c)(4) of the Code provides, in part, that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare qualify for recognition of exemption.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides, in part, that:

...an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements....

In Revenue Ruling 72-102, 1972-1 C.B. 149, it was held that a membership organization formed by a developer to administer and enforce covenants for preserving the architecture and appearance of a housing development and to own and maintain common green areas, streets, and sidewalks for the use of all development residents was exempt under section 501(c)(4) of the Code.

Enclosure I continued

Revenue Ruling 74-99, 1974-1 C.B. 131 which modified and clarified Revenue Ruling 72-102, provides in part that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. The Revenue Ruling, in reciting the areas and facilities owned and maintained by the organization, speaks only of "common green areas, streets, and sidewalks." The Revenue Ruling was, by the quoted phrases, designed to indicate that the only areas and facilities encompassed were those traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community, health, safety and welfare. Thus, the Revenue Ruling was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association, as appropriate and consistent with exemption under section 501(c)(4).

Revenue Ruling 74-17, 1974-1 C.B. 130, states that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption.

Since you are maintaining a [REDACTED] acre, [REDACTED] building commercial office complex on behalf of [REDACTED] owner/occupants, you are similar to the organization described in Revenue Ruling 74-17. In addition, you are not formed to serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, and the property you maintain is not open for the use and enjoyment of the general public. In light of these facts, you do not qualify as an organization described in section 501(c)(4) of the Code.